

**WES MOORE**  
GOVERNOR

**ARUNA MILLER**  
LT. GOVERNOR



**MICHELE L. COHEN, ESQ.**  
**SAMUEL G. ENCARNACION**  
**DEBRA LYNN GARDNER**  
**NIVEK M. JOHNSON**  
**DEBORAH MOORE-CARTER**

**STATE OF MARYLAND**  
**PUBLIC INFORMATION ACT COMPLIANCE BOARD**

**PIACB 23-30**

**July 18, 2023**

**Maryland 529 / Office of the State Treasurer, Custodian**  
**Lisa Getter Peterson, Complainant**

In February of 2023, the complainant, Lisa Getter Peterson, sent a Public Information Act (“PIA”) request to the Maryland 529 program (“MD 529”) for certain exhibits that were discussed at two meetings of the MD 529 Board. In response, MD 529 disclosed all but one record, an exhibit labeled 2021 MPCT Rollover Analysis (“MPCT Analysis”), which MD 529 withheld under §§ 4-301, 4-343, and 344 of the PIA.<sup>1</sup> MD 529 asserted that disclosure of the MPCT Analysis would be contrary to the public interest because it would discourage receipt of “full and frank advice.” The complainant disagreed with MD 529’s response and, after attempting (unsuccessfully) to resolve her dispute through the Office of the Public Access Ombudsman, now files this complaint alleging that MD 529 withheld the MPCT Analysis in error. As explained below, we dismiss the complaint as moot.

**Background**

Before briefly setting out the facts at issue, we first explain a recent change in the law relevant to the disposition of this matter. In 1997, the Legislature created MD 529 with the intent to “enhance the accessibility and affordability of higher education” by “establishing a method to provide for the prepayment of tuition at eligible institutions of higher education.” Md. Code Ann., Educ. § 18-1902. Until recently, the MD 529 Board administered the plans and trusts established under certain subtitles of the Education Article. *See* Md. Code Ann., § 18-1904(b) (2022). During the 2023 legislative session, the General Assembly passed a bill that abolished the MD 529 Board and charged the Office of the State Treasurer (“STO”) with administering the programs. *See* 2023 Md. Laws, ch. 113; *see also* Md. Code Ann., Educ. § 18-1904. The Legislation that abolished the MD 529 Board and transferred responsibility for the administration of MD 259 to the STO took effect on June 1, 2023. *See* 2023 Md. Laws, ch. 113, § 2 (providing that, “on June 1, 2023, the Maryland 529 Board is hereby abolished and the State Treasurer shall be the successor of the Maryland 529 Board”); *id.* § 13 (providing that “Section 1 of this Act”—the section that transferred control of MD 529 to the STO—“shall take effect June 1, 2023”). Thus, for purposes of this complaint—which was filed on June 1, 2023—the

---

<sup>1</sup> Statutory citations are to the General Provisions Article of Maryland’s Annotated Code.

STO is the custodian of the MPCT Analysis.<sup>2</sup> *See id.* § 3 (providing that, on June 1, 2023, “all of the . . . books and records (including electronic records) . . . that are transferred under this Act shall be transferred to the Office of the State Treasurer”).

The relevant timeline is as follows. In February 2023, the complainant requested copies of four specific exhibits discussed at two different MD 529 Board meetings in 2021. On February 24, 2023, MD 529 disclosed three of those exhibits, but denied inspection of the fourth—the MPCT Analysis—citing §§ 4-301, 4-343, and 4-344 of the PIA.<sup>3</sup> MD 529 contended that the MPCT Analysis qualified as an intra-agency memorandum and was subject to the deliberative process privilege, and that disclosure of the record would discourage receipt of “full and frank advice.” The complainant was unsatisfied with MD 529’s response to her PIA request and thus sought assistance through the Public Access Ombudsman. Ultimately, on May 25, 2023, the Ombudsman issued a final determination stating that the dispute was not resolved and, about a week later, the complainant filed this complaint.

The complainant challenges MD 529’s withholding of the MPCT Analysis on two grounds. First, she argues that, because the MD 529 Board no longer exists, the public interest cited—the MD 529 Board’s receipt of full and frank advice—no longer applies. Second, she points out that the MPCT Analysis was distributed at a public meeting and contends that the record should therefore be publicly available. In response to the complaint, the STO—the agency now charged with administering MD 529—asserts that, despite the transfer of administrative power, the STO maintains any pre-existing privileges that may have attached to records when they were in the custody of the MD 529 Board. However, in this particular case, the STO explains, it has chosen to waive the privilege and produce the MPCT Analysis to the complainant. The STO attaches a letter from the State

---

<sup>2</sup> State Archives has adopted regulations that govern the transfer of records. When a custodian’s term expires, the custodian must “deliver custody and control of all records kept or received in the transaction of official business to the custodian’s successor, supervisor, or records officer, or to Archives.” COMAR 14.18.02.12. Records in the possession of an agency that has been terminated must “be transferred to the custody of Archives, provided that such transfer is consistent with the provision of any such termination.” COMAR 14.18.02.13A. While the MD 529 Board no longer exists as an agency, MD 529 as a program does—thus, this situation may be more akin to a change in the custodian of records described in COMAR 14.18.02.12. In any event, the STO clearly has possession of the MPCT Analysis, and is thus a “custodian” of that record for purposes of the PIA. *See* § 4-101(d)(2) (custodian means any “authorized individual who has physical custody and control of a public record”).

<sup>3</sup> Section 4-301(a)(1) of the PIA shields records that “by law” are “privileged or confidential” from disclosure. Sections 4-343 and 4-344 allow a custodian to deny inspection of “interagency or intra-agency letters or memoranda” if the custodian determines that inspection would be “contrary to the public interest.” *See also Admin. Ofc. of the Courts v. Abell Foundation*, 480 Md. 63, 89 (2022) (explaining that the deliberative process privilege is encompassed by § 4-344).

Treasurer to the complainant, dated June 30, 2023, indicating that he has waived the deliberative process privilege “as part of [the STO’s] efforts to provide transparency, where appropriate, to MPCT account holders.” The letter indicates that the STO provided a copy of the MPCT Analysis as an enclosure. Thus, the STO argues that the complaint is now moot.

### **Analysis**

The PIA authorizes us to resolve complaints that allege certain violations of its provisions, including that a custodian denied inspection of a public record in error. *See* § 4-1A-04(a)(1)(i). Before filing a complaint, a complainant must attempt to resolve the dispute through the Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a). If we find a violation, the PIA directs us to provide specific remedies, e.g., that we “order the custodian to . . . produce the public record for inspection” or “promptly respond” to a request for public records. § 4-1A-04(a)(3).

Turning to the complaint here, we agree with the STO that its production of the MPCT Analysis means that the complaint is moot. A matter is moot when “there is no longer an existing controversy between the parties” at the time the matter is pending review, and the reviewing body “cannot provide an effective remedy.” *Hammen v. Baltimore County Police Dep’t*, 373 Md. 440, 449 (2003); *see also, e.g.*, PIACB 22-11 (Apr. 15, 2022) (dismissing a complaint alleging an unreasonable fee as moot where the custodian agreed, after the complaint was filed, to provide the records free of charge). The STO provided the record in full without any redactions, thus there is no longer a controversy that we can resolve or—more importantly—a meaningful remedy that we may provide. *Contra, e.g., Ireland v. Shearin*, 417 Md. 401, 407 (2010) (declining to find a case moot where the requester maintained “the right to challenge the adequacy of [the] later production,” and also claimed statutory damages not provided in Subtitle 1A of the PIA). With full disclosure of the sole record in dispute and no further remedy provided in Subtitle 1A of the PIA, we conclude that the matter before us is moot and therefore dismiss the complaint.

### **Conclusion**

Because the STO has elected to produce the sole record in dispute to the complainant in full without redactions, we dismiss this complaint as moot.

#### **Public Information Act Compliance Board**

*Michele L. Cohen, Esq.*

*Samuel G. Encarnacion*

*Debra Lynn Gardner*

*Nivek M. Johnson*

*Deborah Moore-Carter*